

NSP Notice
Section II. B.

3. Continued affordability. Grantees shall ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental, or redevelopment of abandoned and foreclosed-upon homes and residential properties under this section remain affordable to individuals or families whose incomes do not exceed 120 percent of area median income or, for units originally assisted with funds under the requirements of section 2301(f)(3)(A)(ii), remain affordable to individuals and families whose incomes do not exceed 50 percent of area median income.

a. In its NSP action plan substantial amendment, a grantee will define “affordable rents” and the continued affordability standards and enforcement mechanisms that it will apply for each (or all) of its NSP activities. HUD will consider any grantee adopting the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f), and 92.254 to be in minimal compliance with this standard and expects any other standards proposed and applied by a grantee to be enforceable and longer in duration. (Note that HERA’s continued affordability standard is longer than that required of subrecipients and participating units of general local government under 24 CFR 570.503 and 570.501(b).)

Colorado NSP Substantial Amendment (page 20)

Continued Affordability for NSP-Assisted Housing

The State of Colorado will ensure long term affordability through the use of a Beneficiary and Use Covenant that will be recorded against the property. If an owner who has been assisted through this program transfers title to the property before the affordability period expires, the assistance provided by the State will be subject to recapture. The State will mirror the minimum affordability period of the federal HOME Investment Partnership Program, 24 CFR 92.252(a), (c) (e) and (f), and 92.254. The long-term affordability period is based on the dollar amount of final direct subsidy (i.e., the amount of the NSP assistance that enabled the homebuyer to purchase the dwelling unit) in the project and specific regulations for addressing the issues of the sale of a property prior to the end of the long-term affordability period, known as recapture apply. The minimum affordability period is listed below:

- Up to \$15,000 = 5 years
- \$15,001 - \$40,000 = 10 Years
- Over \$40,000 = 15 Years
- New Construction = 20 Years

Rental Affordability

HOME Rule – 24 CFR 92.252(a), (c), (e), & (f)

(a) *Rent limitation.* HUD provides the following maximum HOME rent limits. The maximum HOME rents are the lesser of:

- (1) The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or
- (2) A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

(c) *Initial rent schedule and utility allowances.* The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone). The participating jurisdiction must review and approve rents proposed by the owner for units subject to the maximum rent limitations in paragraphs (a) or (b) of this section. For all units subject to the maximum rent limitations in paragraphs (a) or (b) of this section for which the tenant is paying utilities and services, the participating jurisdiction must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services.

e. *Periods of Affordability.* The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. They must be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

Rental Housing Activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds:	
Under \$15,0000	5
\$15,000 to \$40,000	10
Over \$40,000; or Rehabilitation involving refinancing	15
New construction or acquisition of newly constructed housing	20

(f). *Subsequent rents during the affordability period.*

(1) The maximum HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. HUD then provides the new maximum HOME rent limits to participating jurisdictions. Regardless of changes in fair market rents and in median income over time, the HOME rents for a project are not required to be lower than the HOME rent limits for the project in effect at the time of project commitment.

(2) The participating jurisdiction must provide project owners with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits in paragraph (f)(1) of this section) in accordance with the written agreement between the participating jurisdiction and the owner. Owners must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with this section.

(3) Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

Homeownership - Recapture
HOME Rule – 24 CFR 92.254

§ 92.254 Qualification as Affordable Housing: Homeownership

(a) *Acquisition with or without rehabilitation.* Housing that is for acquisition by a family must meet the affordability requirements of this paragraph (a).

(1) The housing must be single-family housing.

(2) The housing must be modest housing as follows:

(i) In the case of acquisition of newly constructed housing or standard housing, the housing has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area, as described in paragraph (a)(2)(iii) of this section.

(ii) In the case of acquisition with rehabilitation, the housing has an estimated value after rehabilitation that does not exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(iii) of this section.

(iii) If a participating jurisdiction intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single-family properties, the participating jurisdiction may use the Single Family Mortgage Limits under Section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) (which may be obtained from the HUD Field Office) or it may determine 95 percent of the median area purchase price for single

family housing in the jurisdiction, as follows. The participating jurisdiction must set forth the price for different types of single family housing for the jurisdiction. The 95 percent of median area purchase price must be established in accordance with a market analysis which ensured that a sufficient number of recent housing sales are included in the survey. Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a one-month reporting period; for 250 through 499 sales per month, a two-month reporting period; for less than 250 sales per month, at least a three-month reporting period. The data must be listed in ascending order of sales price. The address of the listed properties must include the location within the participating jurisdiction. Lot, square and subdivision data may be substituted for the street address. The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire participating jurisdiction. To determine the median, take the middle sale on the list if an odd number of sales and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by .95 to determine the 95 percent of the median area purchase price. This information must be submitted to the HUD Field Office for review.

(3) The housing must be acquired by a homebuyer whose family qualifies as a low-income family and the housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section.

(4) *Periods of affordability.* The HOME-assisted housing must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The per unit amount of HOME funds and the affordability period that they trigger are described more fully in paragraphs (a)(5)(i) (resale) and (ii) (recapture) of this section.

Homeownership assistance HOME amount per-unit	Minimum period of affordability in years
Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15

(5) *Resale and recapture.* To ensure affordability, the participating jurisdiction must impose either resale or recapture requirements, at its option. The participating jurisdiction must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan. HUD must determine that they are appropriate.

[i. Resale – see separate document]

(ii) *Recapture.* Recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the HOME assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The participating jurisdiction may structure its recapture provisions based on its program design and market conditions. The period of affordability is based upon

the total amount of HOME funds subject to recapture described in paragraph (a)(5)(ii)(A)(5) of this section.

(A) The following options for recapture requirements are acceptable to HUD. The participating jurisdiction may adopt, modify or develop its own recapture requirements for HUD approval. In establishing its recapture requirements, the participating jurisdiction is subject to the limitation that when the recapture requirement is triggered by a sale (voluntary or involuntary) of the housing unit, and there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, the participating jurisdiction can only recapture the net proceeds, if any. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs.

(1) *Recapture entire amount.* The participating jurisdiction may recapture the entire amount of the HOME investment from the homeowner.

(2) *Reduction during affordability period.* The participating jurisdiction may reduce the HOME investment amount to be recaptured on a prorata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.

(3) *Shared net proceeds.* If the net proceeds are not sufficient to recapture the full HOME investment (or a reduced amount as provided for in paragraph (a)(5)(ii)(A)(2) of this section) plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment made by the owner since purchase, the participating jurisdiction may share the net proceeds. The net proceeds are the sales price minus loan repayment (other than HOME funds) and closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

HOME Investment/HOME Investment + homeowner investment	× Net Proceeds =	HOME amount to be recaptured
Homeowner Investment/HOME Investment + homeowner investment	× Net Proceeds =	amount to homeowner

(4) *Owner investment returned first.* The participating jurisdiction may permit the homebuyer to recover the homebuyer's entire investment (downpayment and capital improvements made by the owner since purchase) before recapturing the HOME investment.

(5) *Amount subject to recapture.* The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the

dwelling unit. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (i.e., the development subsidy). The recaptured funds must be used to carry out HOME-eligible activities in accordance with the requirements of this part. If the HOME assistance is only used for the development subsidy and therefore not subject to recapture, the resale option must be used.

(6) *Special considerations for single-family properties with more than one unit.* If the HOME funds are only used to assist a low-income homebuyer to acquire one unit in single-family housing containing more than one unit and the assisted unit will be the principal residence of the homebuyer, the affordability requirements of this section apply only to the assisted unit. If HOME funds are also used to assist the low-income homebuyer to acquire one or more of the rental units in the single-family housing, the affordability requirements of § 92.252 apply to assisted rental units, except that the participating jurisdiction may impose resale or recapture restrictions on all assisted units (owner-occupied and rental units) in the single family housing. If resale restrictions are used, the affordability requirements on all assisted units continue for the period of affordability. If recapture restrictions are used, the affordability requirements on the assisted rental units may be terminated, at the discretion of the participating jurisdiction, upon recapture of the HOME investment. (If HOME funds are used to assist only the rental units in such a property then the requirements of § 92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of § 92.254.)

(7) *Lease-purchase.* HOME funds may be used to assist homebuyers through lease-purchase programs for existing housing and for housing to be constructed. The housing must be purchased by a homebuyer within 36 months of signing the lease-purchase agreement. The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed. If HOME funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HOME affordability requirements for rental housing in § 92.252 shall apply if the housing is not transferred to a homebuyer within forty-two months after project completion.

(8) *Contract to purchase.* If HOME funds are used to assist a homebuyer who has entered into a contract to purchase housing to be constructed, the homebuyer must qualify as a low-income family at the time the contract is signed.

(9) *Preserving affordability.*

(i) Notwithstanding § 92.214 (a)(6), to preserve the affordability of housing that was previously assisted with HOME funds and subject to the requirements of § 92.254(a), a participating jurisdiction may use additional HOME funds to acquire the housing through a purchase option, right of first refusal, or other preemptive right before foreclosure, or to acquire the housing at the foreclosure sale, to undertake any necessary rehabilitation, and to provide assistance to another homebuyer. The housing must be sold to a new eligible homebuyer in accordance with the requirements of § 92.254(a). Additional HOME funds may not be used if the mortgage in default was funded with HOME funds.

(ii) The total amount of original and additional HOME assistance may not exceed the maximum per-unit subsidy amount established under § 92.250. Alternatively to charging the cost to the HOME program under § 92.206, the participating jurisdiction may charge the cost to the HOME program under § 92.207, as a reasonable administrative cost of its HOME program, so that the additional HOME funds for the housing are not subject to the maximum per-unit subsidy amount.